

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**BRITE SMART CORP.**

*Plaintiff,*

v.

**GOOGLE INC.**

*Defendant.*

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**Civ. Action No. 2:14-cv-760-JRG-  
RSP**

**JURY DEMANDED**

**BRITE SMART CORP.’S RESPONSE TO DEFENDANT’S SUPPLEMENTAL  
BRIEFING ON ITS MOTION TO TRANSFER VENUE**

Defendant Google, Inc.’s (“Defendant” or “Google”) supplemental briefing on its venue transfer motion claims that Patrick Zuili’s May 7, 2015 deposition testimony contradicts his declaration attached to Brite Smart’s Response in Opposition to Defendant’s Motion to Transfer (Dkt. 27-1). *See* Dkt. 83. Specifically, Defendant concludes that because the Boca Raton, Florida based inventor and CEO of Brite Smart Corp. (“Brite Smart”) testified that he does not know “where Marshall, Texas is,” it could not be more convenient for him to attend trial in Marshall, Texas instead of San Francisco, California. *Id.* Defendant further concludes that Mr. Zuili’s other testimony (“there is no reason for me to be [at the principal office in Tyler, Texas],”) somehow diminishes Brite Smart’s connection to the district. *Id.* Both conclusions rely on faulty logic and add nothing to the record already before the Court.

First, one doesn’t need to know precisely where Marshall, Texas is to know that Texas, including Marshall, is much closer to Boca Raton, Florida than San Francisco, California is. San

Francisco, California is over **3,000 miles** from Boca Raton, Florida.<sup>1</sup> Even assuming we compared this distance to the distance between Boca Raton and the Texas border *farthest* from Boca Raton (El Paso), **San Francisco is still 1,183 miles farther from Boca Raton than El Paso is.**<sup>2</sup> And Tyler, Texas – a destination much closer to the courthouse that Mr. Zuili was not asked about at his deposition, but does have specific knowledge of – is only 1183 miles from Boca Raton.<sup>3</sup> That is approximately **1/3** of the travel time it would take to get from Boca Raton to San Francisco by car.<sup>4</sup> Flights from Boca Raton’s nearby airports to San Francisco are also longer and more expensive than flights from Boca Raton to *anywhere* in Texas.<sup>5</sup> Food and lodging in nearby Tyler (Brite Smart’s headquarters) is also much less expensive than food and lodging in San Francisco.<sup>6</sup> Accordingly, it cannot be said that Mr. Zuili’s declaration has been contradicted in any way by his deposition testimony. Texas (including Marshall) still remains a much more convenient venue for Mr. Zuili than California (especially San Francisco). Had Google bothered to question Mr. Zuili on the *convenience* of the locations instead of his

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<sup>1</sup> See Driving Directions and Travel Time Between Boca Raton, Florida and San Francisco, California from [www.mapquest.com](http://www.mapquest.com) (Exhibit A).

<sup>2</sup> Compare Driving Directions and Travel Time Between Boca Raton, Florida and San Francisco from [www.mapquest.com](http://www.mapquest.com) (Exhibit A) with Driving Directions and Travel Time Between Boca Raton, Florida and El Paso, Texas from [www.mapquest.com](http://www.mapquest.com) (Exhibit B).

<sup>3</sup> See Driving Directions and Travel Time Between Boca Raton, Florida and Tyler, Texas from [www.mapquest.com](http://www.mapquest.com) (Exhibit C).

<sup>4</sup> Compare Driving Directions and Travel Time Between Boca Raton, Florida and San Francisco from [www.mapquest.com](http://www.mapquest.com) (Exhibit A) with Driving Directions and Travel Time Between Boca Raton, Florida and Tyler, Texas from [www.mapquest.com](http://www.mapquest.com) (Exhibit C).

<sup>5</sup> See Map of Southwest Airlines Flights from West Palm Beach Florida and Fort Lauderdale, Florida from [www.southwest.com](http://www.southwest.com) (Exhibit D).

<sup>6</sup> Compare Dkt. 27, p. 13, n.19 (stating that the GSA FY 2015 per diem rates for lodging and meals for San Francisco is \$290) <http://www.gsa.gov/portal/category/100120>, accessed November 3, 2014, with The GSA FY 2015 per diem rates for lodging and meals for Tyler, Texas, which is \$129. See <http://www.gsa.gov/portal/category/100120>, accessed June 22, 2015. Notably, the per diem rates for Marshall, Texas and Tyler, Texas are the same.

knowledge of Marshall's geographic location, it likely would have yielded a more fruitful explanation and prevented Google's confusion altogether.<sup>7</sup>

Second, Mr. Zuili is the inventor of the patents-in-suit and the CEO of Brite Smart, but he does not run the day-to-day operations of the company. Mike Collins is a Tyler, Texas based resident and the vice-president of Brite Smart. Mike Collins was hired to manage Brite Smart's headquarters in Tyler, Texas; assist Brite Smart with its licensing activities; and run the day-to-day operations of the company. Accordingly, Mr. Zuili's explanation that he had no reason to be at Brite Smart's headquarters merely reflected the fact that he was not in charge of Brite Smart's day-to-day operations, so there was no reason for him to be there. His other testimony strategically omitted from Google's supplement makes this quite clear:

Q: So your – your hiring of Mr. Collins had nothing to do with an intention to bring patent litigation in the Eastern District of Texas?

A: Mr. Collins was hired to licensing and representing the company and doing the day-to-day operation. That's it.

Zuili Depo. Excerpt 98:13-18 (Exhibit E). If anything, Mr. Zuili's testimony further solidifies that the nerve-center of Brite Smart is East Texas, not Boca Raton, Florida. That Mr. Zuili is not in charge of the day-to-day operations of the company is consistent with Mr. Collins' account as well. *See* Collins Decl. (Dkt. 27-2). Accordingly, Google's supplemented briefing (Dkt. 83) plows the same ground as the original transfer briefing, and Mr. Zuili's testimony remains

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<sup>7</sup> Mr. Zuili is a French national that immigrated to the United States in 2003; his comprehension and understanding of Google's geographic interrogation was not fully appreciated at the time of his deposition. For example, when asked, "Do you know where Marshall, Texas is?" he would have had trouble giving directions, thus his answer that he did not know where Marshall was located is accurate. But if asked, (1) "Is Marshall, Texas close to Tyler, Texas?" or (2) "Is Marshall, Texas closer to Boca Raton than San Francisco?" or (3) "Why is Marshall, Texas a more convenient venue to attend trial than San Francisco, California?" his answer likely would have been less confusing to Google.

consistent with his previous declaration. Any confusion on Google's part lies with its questions at the deposition, not Mr. Zuili's testimony.

Dated: June 22, 2015

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a) on the date above.

/s/ Stafford Davis

Stafford Davis